IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.985/07

Iqbal Singh **Versus** State & Ors.

DATE OF ORDER :: 14/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. D.D. Khandelwal, for petitioner

Mr. Arun Sharma, Public Prosecutor

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Instant petition has been filed assailing order dated 8th June, 2007 whereby learned trial Judge dismissed the application filed u/s.190(1) of the Code and further observed that since offence is to be tried by Court of Session and no charge sheet was filed against other co-accused as alleged by petitioner, the same can be considered by learned Sessions Judge during the course of trial, if any, evidence comes on record while exercising power u/s.319 of the Code.

On a written report, FIR was registered for offence u/ss.363 & 366(A) IPC on 18th March, 2007 and offence as alleged was against four co-accused persons namely; Abid, Rafiq, Pappu & Kallu. But, after investigation and taking the statement of prosecutrix into consideration, charge sheet was filed against accused Abid & Rafiq for offence u/ss.363, 366A & 376 IPC. After filing charge sheet, petitioner filed a complaint in which it was alleged that left out two co-

accused namely; Pappu & Kallu they too have been specifically named in the FIR, but cognizance has not been taken against them.

Undisputedly, it being a session trial charge sheet was filed against two accused persons namely; Abid and Rafiq and after filing charge sheet, their case was committed to the Court of Session u/s.209 of the Code and if any further accused is to be added, it can be considered only during the course of trial if any evidence comes against them while exercising power u/s.319 Cr.P.C. and taking into consideration the judgment of this court, learned trial Judge has rejected the application filed u/s.190(1) of the Code vide order dated 8th June, 2007.

This court does not find any infirmity in the order impugned passed by learned trial Judge.

The judgment in **Hasanbhai Valibhai Qureshi Vs. State of Gujarat [2004 (3) Supreme-71]** on which counsel for petitioner has placed reliance has no application in the facts of instant case.

Consequently, the misc. petition stands dismissed.

[AJAY RASTOGI],J.